

Appl. No. 10/637,202  
Response Dated September 18, 2006  
Reply to Office Action of April 17, 2006

REMARKS

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Summary

The applicant respectfully requests reconsideration of the present application as amended herein. Claims 1-49 stand in this application. The applicant respectfully requests that the Examiner favorably reconsider and allow the standing claims.

Allowable Subject Matter

The applicant herein acknowledges that the Examiner has allowed claims 32-38.

35 U.S.C. § 103

At page 2, paragraph 2 of the Final Office Action claims 1-13, 21-31, 39-46, and 48 stand rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent Number (USPN) 4,156,302 to Van Niel (hereinafter Niel). The applicant respectfully traverses the rejection, and requests that the Examiner reconsider and withdraw the anticipation rejection.

The Office Action has failed to meet its burden of establishing a *prima facie* case of obviousness. According to MPEP §2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching

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or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Fueck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP 706.02(j).

As recited above, to form a *prima facie* case of obviousness under 35 U.S.C. § 103(a) the cited references, when combined, must teach or suggest every element of the claim. See MPEP § 2143.03, for example. The applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in independent claims 1, 21, 32, 39, 42, and 46. Therefore independent claims 1, 21, 32, 39, 42, and 46 define over Niel. More specifically, the Examiner alleges that it would have been obvious to have the driver rod to penetrate the outer wall at approximately a 45 degree angle relative to the outer wall since it is not inventive to discover the optimum or workable ranges by routine experimentation. The applicant respectfully disagrees.

MPEP § 2144.05(l) indicates that "in the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art" a *prima facie* case of obviousness exists." The applicant reasserts that Niel Figure 1 and column 5 lines 55-57 disclose that the jaws are "...selectively movable along a plane generally parallel to the general plane of the case 16." Further, lines 57-60 recite that "[t]he jaws may have generally rounded edges 49 so as to engage the confronting surfaces of the side walls 52 of the clip-like fastener 50 upon axial movement through the slots 43. . ." The applicant accordingly affirms that the jaws disclosed by Niel, moving in a plane generally parallel to the general plane of the case, engage the surface of the side walls at substantially a 90 degree angle. Accordingly, the applicant asserts that the range of angles disclosed by Niel (i.e.,

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substantially 90 degrees) does not include approximately 45 degree angle relative to the outer wall recited by independent claims 1, 21, 32, 39, 42, and 46.

MPEP § 2144.05(I)(A) recites that “where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” (citing *In re Aller*, 105 U.S.P.Q. 233, 235 (CCPA 1955)). Further, “[t]he normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages.” See *In re Boesch* 205 USPQ 215, 219 (CCPA 1980). The applicant again affirms that the general conditions disclosed by Niel include jaws operating at a substantially 90 degree, or substantially perpendicular, relative to the side walls. Niel does not disclose the jaws operating within a range of angles, nor would any range surrounding approximately 90 degrees include the approximately 45 degree angle as recited by currently amended independent claims 1, 21, 32, 39, 42, and 46.

The applicant therefore affirms that the Examiner has failed to establish a *prima facie* case of obviousness against independent claims 1, 21, 32, 39, 42, and 46 as Niel neither discloses a range of which the of approximately 45 degrees recited by independent claims 1, 21, 32, 39, 42, and 46 is part nor would a range of substantially or approximately 90 degrees include the approximately 45 degrees. Accordingly, the applicants assert that independent claims 1, 21, 32, 39, 42, and 46 are patentable as each recites at least an element not taught or rendered obvious by Niel. Dependent claims 2-20, 22-31, 40-41, 43-45, and 47-49 are patentable as each depends from a patentable independent claim.

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**CONCLUSION**

For at least the foregoing reasons, the applicant submit that he has overcome the Examiner's rejections and that he has the right to claim the invention as set forth in the listed claims. The Examiner is invited to contact the undersigned at 360-696-8602 to discuss any matter concerning this application.

The applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, the applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

The applicant believes that claims 1-49 are in allowable form. Accordingly, the applicant earnestly solicits a timely Notice of Allowance to this effect.

Respectfully submitted,

KACVINSKY LLC

September 18, 2006

Dated

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 Under 37 C.F.R. §1.34(a)

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